

National Transportation Safety Board

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have been presented to staff in advance of the formal scheduling of the meeting. This procedure ensures orderly and thorough consideration of all views.

(c) *Exception.* This limitation does not apply to safety enforcement cases handled by the Board pursuant to part 821 of this chapter. Separate *ex parte* rules, at part 821, subpart J, apply to those proceedings.

[62 FR 3808, Jan. 27, 1997]

PART 835—TESTIMONY OF BOARD EMPLOYEES

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AUTHORITY: 5 U.S.C. 301; Independent Safety Board Act of 1974, as amended (49 U.S.C. 1101 *et seq.*).

§ 835.1 Purpose.

This part prescribes policies and procedures regarding the testimony of employees of the National Transportation Safety Board (Board) in suits or actions for damages and criminal proceedings arising out of transportation accidents when such testimony is in an official capacity and arises out of or is related to accident investigation. The purpose of this part is to ensure that the time of Board employees is used only for official purposes, to avoid embroiling the Board in controversial issues that are not related to its duties, to avoid spending public funds for non-Board purposes, to preserve the impartiality of the Board, and to prohibit the discovery of opinion testimony.

[63 FR 71607, Dec. 29, 1998]

§ 835.2 Definitions.

Accident, for purposes of this part includes “incident.”

Board accident report means the report containing the Board’s determinations, including the probable cause of an accident, issued either as a narrative report or in a computer format (“briefs” of accidents). Pursuant to section 701(e) of the Federal Aviation Act of 1958 (FA Act), and section 304(c) of the Independent Safety Board Act of 1974 (49 U.S.C. 1154(b)) (Safety Act), no part of a Board accident report may be admitted as evidence or used in any suit or action for damages growing out of any matter mentioned in such reports.

Factual accident report means the report containing the results of the investigator’s investigation of the accident. The Board does not object to, and there is no statutory bar to, admission in litigation of factual accident reports. In the case of a major investigation, group chairman factual reports are factual accident reports.

[63 FR 71607, Dec. 29, 1998, as amended at 64 FR 5622, Feb. 4, 1999]

§ 835.3 Scope of permissible testimony.

(a) Section 701(e) of the FA Act and section 304(c) of the Safety Act preclude the use or admission into evidence of Board accident reports in any suit or action for damages arising from accidents. These sections reflect Congress’ “strong * * * desire to keep the Board free of the entanglement of such suits.” Rep. No. 93–1192, 93d Cong., 2d Sess., 44 (1974), and serve to ensure that the Board does not exert an undue influence on litigation. The purposes of these sections would be defeated if expert opinion testimony of Board employees, which may be reflected in the views of the Board expressed in its reports, were admitted in evidence or used in litigation arising out of an accident. The Board relies heavily upon its investigators’ opinions in its deliberations. Furthermore, the use of Board employees as experts to give opinion testimony would impose a significant administrative burden on the Board’s investigative staff. Litigants must obtain their expert witnesses from other sources.